

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHANGHAI WIN-WING IMPORT AND EXPORT)	Case No. 08-2031 SC
CO., LTD.,)	
)	
Plaintiff,)	ORDER DENYING
)	PLAINTIFF'S
v.)	APPLICATION FOR
)	<u>DEFAULT JUDGMENT</u>
TETSUYA WATANABE, OAKHILLS HARDWOOD)	
FLOORS, INC., K&T ASSOCIATES, INC.,)	
)	
Defendants.)	
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_____)	

I. INTRODUCTION

The present matter comes before the Court on the Application for Default Judgment ("Application") filed by the plaintiff Shanghai Win-Wing Import and Export Co., LTD. ("Plaintiff"). Docket No. 14. Pursuant to Federal Rule of Civil Procedure 55(a), the Clerk of the Court entered default against the defendants Tetsuya Watanabe ("Mr. Watanabe"), Oakhills Hardwood Floors, Inc. ("Oakhills"), and K&T Associates ("K&T") (collectively "Defendants"). Docket No. 12. For the following reasons, the Court DENIES without prejudice Plaintiff's Application.

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II. BACKGROUND

This action arises out of money allegedly owed to Plaintiff for goods purchased, but not paid for, by Defendants. Compl., Docket No. 1, at 1. Plaintiff is a manufacturer and exporter of wood flooring and is located in the People's Republic of China. Id. ¶ 1. K&T was a corporation registered in the State of Washington with its principal place of business at 8911 NE 151st Place, Bothell, WA 98011. Id. ¶ 2. K&T imported wood flooring from Plaintiff and was owned and operated by Mr. Watanabe. Id. Oakhills was also owned by Mr. Watanabe and is a corporation registered in California. Id. ¶ 3. The principal place of business for Oakhills was 6650 Goodyear Road, Benicia, CA 94510. Id. Mr. Watanabe is a resident of California with a last-known address of 6650 Goodyear Road, Benicia, CA 94510. Id. ¶ 4. This Court has jurisdiction as diversity exists between the parties and the amount in controversy exceeds \$75,000. Id. ¶ 6.

Between June 9 and June 27, 2006, K&T issued several orders to purchase wood flooring products from Plaintiff. Id. ¶ 9. From August 27 through September 17, 2006, Plaintiff shipped the wood flooring products from China to California, where they were received by K&T. Id. ¶ 10. Payments for these shipments were due within sixty days, and, as of November 17, 2006, K&T still had an outstanding balance of \$394,995.20 for the orders. Id. ¶ 12.

In February 2007, Mr. Watanabe executed a settlement agreement on behalf of K&T and a guaranty on behalf of Oakhills whereby K&T agreed to pay \$352,717.15 to Plaintiff. Id. ¶ 13. Under this agreement, Oakhills guaranteed the payment plan in the

1 event K&T was unable to make payments. Id.; Compl. Ex. 1.

2 Although Mr. Watanabe signed the agreement, Plaintiff alleges that
3 Mr. Watanabe was aware that neither K&T nor Oakhills would be able
4 to satisfy the agreed-upon payments. Id. ¶ 17. Only one payment
5 of \$10,000 was made by Mr. Watanabe towards the agreement, thereby
6 leaving an outstanding balance of \$342,717.15. Id. ¶ 19.

7 Plaintiff subsequently filed the present action, alleging six
8 causes of action: (1) breach of contract against K&T; (2) action
9 on account against K&T; (3) unjust enrichment against K&T; (4)
10 breach of settlement agreement against K&T; (5) breach of guaranty
11 against Oakhills; and (6) fraudulent and intentional
12 misrepresentation against Mr. Watanabe. On the first three causes
13 of action, Plaintiff sought damages of \$384,995.20, which was the
14 residual amount owed on the orders before the settlement agreement
15 was executed. Under the fourth and fifth causes of action,
16 Plaintiff sought only \$342,717.15, which is the amount due after
17 the settlement agreement. On the sixth cause of action, Plaintiff
18 initially sought "punitive damages likely in excess of
19 \$685,434.30." Compl. ¶ 57. Prior to filing the present Motion,
20 however, Plaintiff dismissed its claim for punitive damages.
21 Docket No. 13. Furthermore, in its Application, Plaintiff
22 clarifies its request for damages, stating: "In this case, Win-
23 Wing is requesting default judgment in the sum certain amount of
24 \$342,717.15." Application at 5.

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1 III. DISCUSSION

2 A. Legal Standard

3 After entry of default, the Court may enter a default
4 judgment. Fed. R. Civ. P. 55(b). "However, entry of default does
5 not automatically entitle the non-defaulting party to entry of a
6 default judgment regardless of the fact that the effect of entry
7 of a default is to deem allegations admitted." In re Villegas,
8 132 B.R. 742, 746 (9th Cir. BAP 1991). Rather, "the decision to
9 enter a default judgment is discretionary." Alan Neuman Prods.,
10 Inc. v. Albright, 862 F.2d 1388, 1392 (9th Cir. 1988). First, the
11 Court must "assess the adequacy of service of process on the party
12 against whom default is requested." Bd. of Trs. of the N. Cal.
13 Sheet Metal Workers v. Peters, No. C-00-0395 VRW, 2000 U.S. Dist.
14 LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001). Once the Court
15 determines that service was sufficient, it may consider the
16 following factors when exercising its discretion to enter a
17 default judgment:

18 (1) the possibility of prejudice to the
19 plaintiff, (2) the merits of plaintiff's
20 substantive claim, (3) the sufficiency of
21 the complaint, (4) the sum of money at
22 stake in the action, (5) the possibility
23 of a dispute concerning material facts,
(6) whether the default was due to
excusable neglect, and (7) the strong
policy underlying the Federal Rules of
Civil Procedure favoring decisions on the
merits.

24 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The
25 general rule of law is that upon default the factual allegations
26 of the complaint, except those relating to the amount of damages,
27 will be taken as true." Geddes v. United Fin. Group, 559 F.2d

1 557, 560 (9th Cir. 1977).

2 **B. Analysis**

3 Federal Rule of Civil Procedure 4 provides the standards for
4 service upon individuals, corporations, associations, or
5 partnerships. Due to various inconsistencies, contradictions, and
6 questions relating to the service of process, the Court is
7 prevented from entering default judgment and the Eitel factors
8 need not be reached.

9 To begin, in the Complaint, Plaintiff asserts that the K&T is
10 "an inactive corporation that was registered in the State of
11 Washington, with its principle [sic] place of business at 8911 NE
12 151st Pl., Bothell, WA 98011." Compl. ¶ 2. In its Application,
13 however, Plaintiff states that "K&T Associates Inc. . . . was a
14 corporation registered in the State of California, with its
15 principle [sic] place of business at 8625 Central Ave., #A,
16 Stanton, CA 90680." Mot. at 2.¹

17 Although worth noting, this discrepancy alone is not
18 especially troubling. More significant are the differences in
19 addresses relating to the service of process. Plaintiff executed
20 three summons: one to Tetsuya Watanabe, 1655 Galindo Street,
21 Apartment 1155, Concord, CA 94520; one to Oakhills Hardwood
22 Floors, Inc., c/o Agent for Service of Process Tetsuya Watanabe,
23 6650 Goodyear Road, Benicia, CA 94510; and one to K&T Associates,
24 Inc., c/o its Officer and Managing or General Agent Tetsuya
25 Watanabe, 1655 Galindo Street, Apartment 1155, Concord, CA 94520.

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27 ¹ The Court notes that the summons for K&T was sent to neither
28 of the above addresses.

1 See Docket Nos. 4, 5, 6. Only one summons was returned executed.
2 According to the proof of service, the party served on the
3 executed summons was Tetsuya Watanabe. Proof of Service, Docket
4 No. 7. This summons, however, was served on a person named "Donny
5 Smith - Person in Charge of Office," at the address of 1647 Willow
6 Pass Road, Concord, CA 94520. Id. Nowhere in the Complaint or
7 the Application does this address appear. Rather, according to
8 the Complaint, the address for Tetsuya Watanabe is 6650 Goodyear
9 Rd., Benicia, CA 94510. Compl. ¶ 4.

10 In an attempt to cure this discrepancy, in the Application,
11 counsel for Plaintiff included a declaration stating: "Upon
12 information and belief, and as confirmed by skip tracing, 1647
13 Willow Pass Road, Concord, CA 94520, is the current residential
14 address of Tetsuya Watanabe." Corey Decl., Docket No. 10, ¶ 4.
15 Aside from the fact that this was not the address provided in the
16 Complaint nor the address listed on the summons for Tetsuya
17 Watanabe, counsel for Plaintiff states that this address is a
18 "residential address," yet the service of process states that the
19 summons was left with "Donny Smith - Person in Charge of Office."
20 See Proof of Service.

21 The cumulative effect of these discrepancies leads the Court
22 to conclude that "the adequacy of service of process on the party
23 against whom default is requested" is not sufficient. Bd. of Trs.
24 of the N. Cal. Sheet Metal Workers, 2000 U.S. Dist. LEXIS 19065,
25 at *2.

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1 **IV. CONCLUSION**

2 For the reasons stated above, Plaintiff's Application is
3 DENIED without prejudice. Plaintiff has 90 days from the date of
4 this Order to cure the above-discussed defects and refile the
5 Application.

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8 IT IS SO ORDERED.

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10 Dated: November 12, 2008



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UNITED STATES DISTRICT JUDGE
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